

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ALAN PINTO,

Plaintiff,

v.

NOVARTIS PHARMACEUTICALS
CORPORATION, NOVARTIS PHARMA
GMBH, and NOVARTIS AG,

Defendants.

Civil Action No.: 1:08-cv-6672-DC

Document electronically filed

JOINT MOTION TO TEMPORARILY STAY ALL PROCEEDINGS

Plaintiff Alan Pinto (“Plaintiff”) and Defendant Novartis Pharmaceuticals Corporation (“NPC”) jointly submit this motion to stay this action pending a decision by the United States Supreme Court (“Supreme Court”) in *Wyeth v. Levine*, 128 S. Ct. 1118 (2008) (No. 06-1249), *granting petition for certiorari from, Levine v. Wyeth*, 944 A.2d 179 (Vt. 2006).¹ Plaintiff alleges that he developed cancer after using Elidel®, a prescription cream approved by the Food and Drug Administration (“FDA”) to treat atopic dermatitis. In *Levine*, the Supreme Court will address the preemptive effect of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et*

¹ “The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Nederlandse Erts-Tankersmaatschappij, N.V. v. Isbrandtsen Co.*, 339 F.2d 440, 441 (2d Cir. 1964) (quoting *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)) (quotation marks omitted). A court may enter a stay pending the resolution of independent proceedings which may bear upon the issues involved in the case. See, e.g., *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979); *Bechtel Corp. v. Local 215, Laborers' Int'l Union*, 544 F.2d 1207, 1215 (3d Cir. 1976); see also *Marshel v. AFW Fabric Corp.*, 552 F.2d 471, 472 (2d Cir. 1977) (per curiam) (instructing the district court to enter a stay pending a decision in a closely related case by the United States Supreme Court upon which the question of liability for damages would likely turn).

seq., on pharmaceutical product liability claims. *Levine* may significantly affect the claims and defenses in this case.

A stay pending *Levine* will not prejudice the parties. The parties are requesting a stay early in the proceedings, before discovery has begun. “A stay of this case will therefore conserve judicial and party resources by avoiding potentially needless and expensive discovery.” *Novartis Corp. v. Dr. Reddy’s Labs., Ltd.*, No. 04-cv-757-SAS, 2004 WL 2368007, at *3 (S.D.N.Y. Oct. 21, 2004) (Scheindlin, J.) (footnotes omitted). On the other hand, if this Court “decline[s] to stay these proceedings, there is a substantial risk that the parties will engage in costly, time-consuming discovery that might ultimately be unnecessary.” *Smithkline Beecham Corp. v. Apotex Corp.*, No. Civ.A 99-cv-4304, 2004 WL 1615307, at *8 (E.D. Pa. July 16, 2004). Moreover, the stay will be of limited duration, as *Levine* is being briefed and is scheduled for the Supreme Court’s October 2008 term.

In addition, this is one of over twenty product liability cases pending in various federal and state courts involving allegations that Elidel® caused alleged injuries. The majority of these other cases have been stayed pending a decision in *Levine*.

Accordingly, the parties respectfully request that the Court (1) stay all proceedings pending the Supreme Court’s decision in *Wyeth v. Levine*, 128 S. Ct. 1118 (2008) (No. 06-1249); and (2) provide that either party may move the Court to lift the stay. A proposed Order is being filed herewith.

Respectfully submitted,

s/ David R. Buchanan

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*Attorneys for Defendant Novartis
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Dated: August 28, 2008

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 28, 2008, Plaintiff Alan Pinto and Defendant Novartis Pharmaceuticals Corporation's Joint Motion to Temporarily Stay All Proceedings was electronically filed with the Court by using the CM/ECF system and served by first class mail upon the following:

David R. Buchanan
Christopher M. Van de Kieft
Seeger Weiss, LLP
One William Street
New York, NY 10004



Shira B. Rosenman

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ORDER

AND NOW, this _____ day of _____, 2008, upon consideration of the joint motion for a stay of this case filed by Plaintiff Alan Pinto and Defendant Novartis Pharmaceuticals Corporation,

IT IS HEREBY ORDERED that the joint motion for a stay pending a ruling by the United States Supreme Court in *Wyeth v. Levine*, 128 S. Ct. 1118 (2008) (No. 06-1249), *granting petition for certiorari from, Levine v. Wyeth*, 944 A.2d 179 (Vt. 2006), is hereby GRANTED; and it is

FURTHER ORDERED that all proceedings are stayed pending *Levine*. Either party may apply to lift the stay by Motion to this Court.

DENNY CHIN
United States District Judge